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A. DONAT.

San Francisco.

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RECENT ENGLISH DECISIONS.

*High Court of Justice, Probate and Divorce Division.*

RIDGWAY v. RIDGWAY.

Condonation is only conditional forgiveness, and condoned adultery and cruelty may be revived by misconduct, which falls short of adultery.

A husband was guilty of adultery and cruelty, which were condoned by his wife. He afterwards made improper overtures to, and attempted to take liberties with, a female servant in his house. *Held*, that the husband's misconduct revived his condoned adultery, and that the wife was entitled to a decree for dissolution of the marriage.

THIS was a wife's petition for a dissolution of marriage on the ground of her husband's adultery and cruelty, and was tried before the President of the Division without a jury.

The respondent alleged that the adultery and cruelty had been condoned.

The petitioner, in giving her evidence, admitted the condonation, but there was evidence that the respondent had afterwards attempted to take liberties with a female servant, whose chastity he solicited.

*Inderwick*, Q. C., and *Bayford*, for the petitioner.

The respondent appeared in person.

HANNEN, P.—The question which has been raised (for the first time, as it seems to me), is one of great importance. It must be remembered that condonation is always conditional forgiveness. It is as if the wife were to say to the husband, "You have sinned against me, but I forgive you upon condition that you do not give me cause of complaint again." I have, therefore, to consider what would be the effect of misconduct such as that of which the respondent is proved to have been guilty, being brought home to the mind of a wife who, after a great trial of feeling, has made up her mind to live with her guilty husband. She finds that he has attempted to take liberties with her servant, and solicited her chastity, and I cannot help thinking that any woman would have a revulsion of feeling wrought in her by such conduct, and would

say to her husband, "I forgave you, it is true, but it was upon the condition that you would not be guilty of such conduct as this, and from this moment, seeing that it is no fault of yours that you have not committed actual adultery in my own house, and with my own servant, whom you have attempted to debauch, I will be no longer a wife to you, and I revoke the forgiveness which I had extended to you." In my judgment, that is the true view to be taken. I believe that misconduct of this kind on a husband's part, though falling short of actual adultery, is a breach of the condition extended to him by his wife, and that she has a right to complain of it. I therefore hold that the adultery and cruelty of the respondent have not been condoned, or, rather, that they have been revived, by the husband's misconduct, and I pronounce a decree *nisi*, with costs.

It is not quite easy to understand the remark of the presiding judge in the principal case, that the question in this case was here raised "for the first time," for as early as 1730, in the Consistory Court, Mich. T. 3d session, it was distinctly held that condoned adultery would be revived by mere acts of cruelty, and that a wife was at as much liberty to charge her husband with former acts of adultery, as if there had been no reconciliation: *Worsley v. Worsley*, cited 1 Hagg. Ec. R. 734. This was followed by *Popkin v. Popkin*, in 1794, in which Sir WILLIAM SCOTT also held that adultery would be revived by acts of cruelty: 1 Hagg. Ec. R. 733 n. And the subject was elaborately examined in *Darant v. Darant*, 1 Hagg. 733 (1825), in which Sir JOHN NICHOLL uses this language: "Must the injury be of the same sort—be sufficient *per se*, to found a separation? Something short would be sufficient, and it seemed almost admitted that solicitation of chastity would remove the effect of condonation of adultery." It is difficult to accede, said he, to the principle that the subsequent injury should be *ejusdem generis* with the crime condoned, or to suppose that the implied condition of forgiveness is: "You may treat me with every degree

of harshness and insult, nay, with actual cruelty, and I bar myself from all remedy for your profligate adultery; only do not commit adultery again." "The plain reason and good sense of the implied condition is that 'you shall not only abstain from adultery, but shall in future treat me—in every respect, treat me—with conjugal kindness.'"

And in this country it is uniformly held not only that the condonation of one specific offence may be extinguished by subsequent acts of a similar character, though of less degree, as adultery by unchaste conduct, cruelty by severity of manner or temper, but that the second offence need not be even of the same *species* as the former, and that adultery may be revived by cruelty or other misconduct in violation of the marriage vow, though not itself sufficient ground *per se* for a divorce: *Langdon v. Langdon*, 25 Vermont 679 (1853), in which condoned cruelty was revived by subsequent severity, the exact nature and degree of which is not given in the report, but it was obviously less than sufficient, standing alone, to found a decree upon, since REDFIELD, C. J., says: "When the new injury complained of is of a similar character, it is not necessary it should go the same extent. For if so, the revival

would be of no importance, since the party might as well rely upon the second injury, as the former one thereby revived, if they were precisely equivalent." So in *Robbins v. Robbins*, 100 Mass. 150 (1868), condonation of cruelty was extinguished by the mere fact that for a period of six weeks, the husband, though living in the same house with his wife, wholly and continuously refused to speak to her; such evidence of persistent and enduring unkindness and ill-temper, not only being itself a breach of marital duties, but also warranting the wife or the court in inferring that the husband's

smothered anger might again break out into acts of positive cruelty. And see *Gardner v. Gardner*, 2 Gray 434. And in *Phillips v. Phillips*, 27 Wis. 252 (1870), it was held that the subsequent misconduct might be of a slighter nature than would have been necessary to constitute an original ground of divorce. See also *Davis v. Davis*, 19 Ill. 334 (1857), that condoned adultery may be revived by subsequent cruelty. Apparently, therefore, there is an entire uniformity of decisions in both countries on this subject.

EDMUND H. BENNETT.

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## RECENT AMERICAN DECISIONS.

### *Court of Appeals of New York.*

#### WARD v. KILPATRICK.

Three requisites constitute the criterion of a fixture: 1, actual annexation to the realty, or something appurtenant thereto; 2, application to the use or purpose to which that part of the realty to which it is connected is appropriated; 3, the intention of the party making the annexation to make a permanent accession to the freehold.

Where the owner of a house in process of construction contracted with the plaintiff for mirror frames to be set in the hall and parlor, those in the hall filling up and occupying a gap left in the wainscoting, and those in the parlor fitted into a gap purposely left in the baseboard, and both being fastened to the walls with hooks and screws, and intended by the owner to be permanently attached to the buildings, and to go with them, when sold, as essential parts of the building: *Held*, that they became part and parcel of the building itself, and, therefore, that the work done by the plaintiff was work upon the house, that the materials furnished were in its construction, and therefore that a lien attached to the building under the mechanic's lien law.

ACTION to foreclose a mechanic's lien under the Act of 1875, applicable to the city of New York. The defendant was owner of eight houses in process of construction, and had contracted with plaintiff for mirror frames to be set in the parlor and hall of each house, those in the halls to be arranged to serve the purpose of hat-racks and umbrella-stands. The work having been completed as plaintiff claimed, he presented his bill, and payment being refused, filed the mechanic's lien which is now sought to be foreclosed.